

## §9.104

a hearing to the Chief Administrative Law Judge, or notify the parties and their representatives, if any, of the Administrator's determination that there is no relevant issue of fact and that a petition for review may be filed with the Administrative Review Board within 20 days of the date of the notice, in accordance with the procedures at §9.107 of this part.

(c) If any party desires review of the determination of the Administrator, including judicial review, a request for an administrative law judge hearing (or petition for review by the Administrative Review Board) must first be filed in accordance with paragraph (a) (or (b)) of this section. If a timely request for hearing (or petition for review) is filed, the determination of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order affirming the determination.

### ADMINISTRATIVE LAW JUDGE PROCEDURES

#### §9.104 How may cases be settled without formal hearing?

(a) In accordance with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute resolution methods, the parties are encouraged to resolve disputes in accordance with the conciliation procedures set forth in §§9.100 and 9.101 of this subpart, or, where such efforts have failed, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR part 18, §18.9. At any time after commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be ap-

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pointed when a party objects to referral of the matter to a settlement judge.

#### §9.105 What procedures are followed if a complaint cannot be resolved through conciliation or settlement agreement?

(a) If the case is not stayed to attempt settlement, the administrative law judge to whom the case is assigned shall within fifteen (15) calendar days following receipt of the request for hearing, notify the parties and their representatives, if any, of the day, time and place for hearing. The date of the hearing shall not be more than 60 days from the date of receipt of the request for hearing.

(b) The administrative law judge may, at the request of a party, or on his/her own motion, dismiss a challenge to a determination of the Administrator upon the failure of the party requesting a hearing or his/her representative to attend a hearing without good cause; or upon the failure of said party to comply with a lawful order of the administrative law judge.

(c) At the Administrator's discretion, the Administrator has the right to participate as a party or as *amicus curiae* at any time in the proceedings, including the right to petition for review of a decision of an administrative law judge in a case in which the Administrator has not previously participated. The Administrator shall participate as a party in any proceeding in which the Administrator's determination has sought imposition of ineligibility sanctions.

(d) Copies of the request for hearing and documents filed in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(e) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion. At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not

the agency is participating in the proceeding.

(f)(1) The rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 shall be applicable to the proceedings provided by this section, except that the Rules of Evidence at 29 CFR part 18, subpart B shall not apply. Rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

(2) To the extent the rules in 29 CFR part 18 are inconsistent with a rule of special application provided by these regulations or the Executive Order, these regulations and the Executive Order are controlling.

**§ 9.106 What rules apply to the decision of the administrative law judge?**

(a) The administrative law judge shall issue a decision within 60 days after completion of the proceeding at which evidence was submitted. The decision shall contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(b) Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the administrative law judge shall issue an order that the successor contractor take appropriate action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where ineligibility sanctions have been sought by the Administrator, the order shall also address whether such sanctions are appropriate.

(c) If an order is issued finding that the contractor violated the Executive Order and these regulations, the administrative law judge may assess a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by

the aggrieved employee(s) in the proceeding.

(d) A proceeding under subpart B of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(e) The decision of the administrative law judge shall become the final order of the Secretary unless a petition for review is timely filed with the Administrative Review Board.

APPEAL PROCEDURES

**§ 9.107 How may an administrative law judge's decision or the Administrator's determination be appealed?**

(a) The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from determinations of the Administrator pursuant to § 9.103(b) of this part and from decisions of administrative law judges pursuant to § 9.106 of this part.

(b) Any aggrieved party desiring review of a decision of the administrative law judge (or of the Administrator, pursuant to § 9.103(b)) shall file a petition for review, in writing, with the Administrative Review Board. No administrative or judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed. To be effective, such a petition for review must be received within 20 days of the date of the decision of the administrative law judge (or Administrator), and shall be served on all parties and the Chief Administrative Law Judge (where the case involves an appeal from an administrative law judge's decision). If a timely petition for review is filed, the decision of the administrative law judge (or Administrator) shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision or declining review of the matter. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision shall be effective immediately.